



# AVOIDING SCAMS

## A TALE OF ASSOCIATION GREED

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Your term on the board is ending and you are now concerned whether the Gantry Condominium Association will continue to be well run and not be subject to future problems or have any con artists involved in making decisions. Incidentally, the association's name is similar to that of Elmer Gantry, a 1960 drama film about a con man who is a fast-talking, traveling salesman who believes that a sucker is born every minute.

A couple of your neighbors and friends in your condominium association have just been elected as president and treasurer of the board, and by all accounts everything is going well. However, you are apprehensive because these friends - one of whom is named Elmer - are always behind in the payment of their bills, they tend to spend money they don't have, and fail to save for possible unanticipated expenses. How will they handle the accounts of the association? As a departing officer on the board, what steps and procedures should you have in place to maintain sufficient internal controls? Certainly, you can suggest that the new board members take courses from CAI of Illinois as to how to be a board member, or you can have the association's attorney advise the new board members that the Illinois Condominium Property Act imposes an obligation upon officers and members of the board that they must exercise care required of a fiduciary. A fiduciary duty is the highest standard of care at either equity or law, which means that a board member stands in a special relation of trust, confidence, or responsibility to the owners in an association.

## **THE FOLLOWING CHECKLIST IS GIVEN TO THE NEW BOARD MEMBERS:**

1. Reserve cash accounts should be separate from operating cash accounts, be in the Association's name, and have the Federal identification number of the association.
2. Each account should be with an insured bank and have balances within the limits set by the FDIC (Federal Deposit Insurance Corporation).
3. Each account instruction should prescribe that at least two (2) officers of the board sign each check or authorize any disbursement.
4. Checks should never be payable to "Cash" and the board should avoid cashier's checks and money orders as disbursements.
5. Never sign blank checks.
6. Invoices for reserve (major capital) expenditures should be physically documented and approved by the board.
7. Invoices should be checked for accuracy and stamped "cancelled" when paid.
8. Major expenditures that are paid from reserve accounts should be based upon, and consistent with, reserve reports prepared by professional engineers retained by the board; the contracts should be reviewed by

the association's attorney and insurance agent after a bidding process, and payments should be made only after the work is reviewed by a consultant.

9. All bank statements should be reconciled monthly, shortly after the statements are received, and the statements should be reconciled by a person other than the check signer or person who deposits the funds.
10. The deposited checks should be reconciled by number, payee, and the amount.
11. Monitor the transactions daily in order to confirm that there were no unauthorized activities.

Elmer, after taking office, realizes that the existing contracts with outside vendors cost the association a considerable amount every year. He would prefer that residents of the association do the work, especially since many of these residents are out-of-work friends of his and he believes that friends should help friends. The professional management company hired by the association has become an impediment to Elmer's plans, and besides, he "knows" more than the agent assigned to the association. The board votes to terminate the management agent and to undertake the management of the association. Elmer requests that he be given the responsibility of dealing with the vendors and entering into contracts with them. In every contract, each vendor includes "a little something" for Elmer. All unit owners in the association are very happy to find out that their assessments will be lowered in the upcoming fiscal year as a result of the board taking over management and reducing costs (since the contracts with vendors included lower costs than those reflected in previous contracts obtained by the management company). During the time they were doing work under their contracts, many of the vendors asked Elmer to change the amount they were to be paid, and Elmer always agreed since 10% of the increased amount came directly to Elmer in cash.

During the year, many of the expenditures on various contracts exceeded the budgeted amounts. Elmer convinced the board that the reserve funds could be used to pay these deficits since the reserve amounts borrowed could be paid back in future years. Besides, the reserve funds are there to be used in the event of a shortfall in the budgeted amounts, and don't we all use our individual savings to pay for unanticipated personal expenses?

Some of the unit owners complain at board meetings about the dirty halls in the condominium and the lack of maintenance around the property. To make sure that they are silenced, Elmer levies a fine for - what he tells the board - are some complaining unit owners causing disturbances in the common elements. Each of the "complaining" unit owners loses the appeal of the fine since Elmer is on the board hearing their appeal. The unit owners are then sued by

the board for the unpaid fines by the association's attorney, who proceeds to add his fees to the unpaid fine amount. The unit owners are told by Elmer that, since they are not on his side, they were punished and that he only helps his friends.

Mr. Freeloader, one of the unit owners, who is performing services for the Association, requests abatement in the payment of his assessments in consideration of the services he is performing. Elmer grants the request to keep the contract amount low. Unfortunately, Mr. Freeloader does not have insurance for his employees to cover workers compensation, liability or property damage at the association. One of the workers is injured on the job, and the association's insurance carrier needs to be notified. Elmer fails to notify the insurance company. This same employee of Mr. Freeloader causes damages to a unit within the association, and his ladder injures a guest visiting another unit owner. Elmer again fails to notify the association's insurance carrier. Eventually, either the association's insurance carrier refuses coverage or agrees to only defend the claims. Elmer again states that the reserve funds will be sufficient to provide funds for the claims.

We could go on and on..... The moral to this story is that only qualified and reputable unit owners should be elected and appointed to the board. While friends and good neighbors are good to have, the running of the affairs of the association is akin to that of managing a business and should only be undertaken by people that can be trusted and who recognize their fiduciary duty. 